

Central Adminisrative Tribunal
Principal Bench, New Delhi

O.A.No.1294/2002

Hon'ble Shri Shanker Raju, Member(J)

Thursday, the 6th day of June, 2002

Shri S.C.Gangil
Superintending Engineer (E)
s/o Shri S.L.Gangil
r/o A-153, Pocket-B
Mayur Vihar, Phase-II
Delhi. Applicant

(By Advocate: Shri Surinder Singh)

Vs.

Union of India through
The Director General of Works
C.P.W.D., Nirman Bhawan
New Delhi. Respondent

(By Advocate: Shri S.Mohd. Arif)

O.R.D.E.R (Oral)

By Shanker Raju, M(J):

Applicant, a Superintending Engineer (Electrical), impugns transfer order dated 9.5.2002 wherein he has been posted from New Delhi to Kolkata vice one Shri S.Burman Roy, who is retiring on 31.5.2002. He has sought quashing of the aforesaid order and reconsideration of his transfer on account of his domestic difficulties.

2. Applicant was posted in Kanpur in 1995 and was transferred to Mumbai, he made a request, through his representation dated 19.7.1995, for his transfer to Delhi on account of construction of his House in Delhi. The aforesaid representation was considered and his transfer to Mumbai was cancelled and he was posted to New Delhi on 28.11.1995.

3. Options have been sought vide order dated 28.1.2002 for transfers during the year 2002-2003. Applicant, in pursuance, has opted for Chandigarh, Lucknow and Jaipur through his application dated 7.2.2002. Applicant has also requested the respondents for his retention in New Delhi on account of construction of his House, marriage of niece and certain other personal family problems. Thereafter, applicant was transferred through impugned order to Kolkata, he thereafter made a representation to the respondents.

4. Learned counsel for applicant, Shri Surinder Singh, has assailed the impugned transfer order on the ground that vide letter dated 5.2.2001, Delhi Development Authority has intimated to the applicant that the construction of the plots has been extended upto December, 2002 and in this view of the matter, he has sought extension of his stay at New Delhi to avoid any pilferage of construction material.

5. Applicant has also assailed the transfer as discriminatory and violative of Articles of 14 and 16 of the Constitution of India. In so much as one Shri Praphakar Singh and Shri Mohan Swarup, despite longer stay in Delhi have been retained but the applicant has been meted out a differential treatment which smacks of malafides besides an arbitrary action. He places reliance on a decision of this Tribunal in Shri Chattar Singh Vs. Union of India & Ors., OA No.912/95, ATJ 1996(2) CAT Page 222, to contend that when similar employees with longer stay were allowed to continue, the transfer is punitive or for a

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collateral purpose and is malafide and arbitrary and is colourable exercise of power. In this background, it is stated that transfer is neither in the administrative exigency or in the public interest.

6. It is further contended that in Central Electrical and Mechanical Engineering Services Group "A" more than 70% posts belong to Delhi, Shri Prabhakar Singh has more stay in New Delhi than the applicant, the respondents have not followed the prescribed norms and guide-lines and his personal problems have not been taken into consideration. It is stated that as far as Shri Prabhakar Singh is concerned, he was junior to the applicant in Electrical side and had come back from deputation where he remained from 24.12.1997 to 25.4.2002 and was out of practice of Electrical Engineering which is pre-requisite to handle a VVIP circle. It is also stated that second longer stayee Shri Mohan Swarup is not being transferred from the parliament library project since long which cannot be countenanced.

7. Respondents' counsel Shri S.Mohd. Arif, rebutted the contentions and, at the outset, stated that the impugned transfer is a general order and in administrative exigency and public interest without any iota of malafides and being an incidence of service, the same cannot be interfered with.

8. It is stated that general order of transfer involving five officers was issued after hectic deliberations by the competent authority. The normal tenure of posting of officers in the grade of

SE at particular station is 3 to 4 years. Applicant being one of the longer stayee in Delhi having been posted continuously since 28.11.1995. During his service tenure of 20 years he had been posted at Delhi for nearly 14 years. It is also stated that at Kolkata four posts of SE (Electrical) exist and being an all India transfer liability, applicant has not been allowed repeated posting at the same station. It is stated that beyond the post of Superintending Engineer transfer is not made solely on the length of service.

9. It is further stated that mere exercise of option would not confer a vested right upon the applicant to be deputed to his choicest station as at the opted places the incumbents have not yet completed their stipulated tenures, as such it is not practicable in administrative exigency to post the applicant at the choicest place.

10. It is also stated that in 1995 on the ground of construction of house, taking a reasonable view of the situation, applicant's transfer was cancelled and he was deputed to Delhi. The same request again made cannot be countenanced in the case of administrative exigency. Applicant's representation was gone into but cannot be acceded. It is further stated that applicant since been relieved on 24.5.2002, the OA is liable to be dismissed.

11. Learned counsel for respondents has relied upon the following decisions of the Apex Court to substantiate his plead:

1. N.K.Singh Vs. UOI, JT 1994(6) SC 298.
2. Shri A.K.Ray Vs. UOI & State of Orissa & Ors., JT 1995 (7) SC 467.
3. Gujarat Electricity Board & Another Vs. Atmaram Songomai Poshani, 1989(2) SCC 602.
4. N.S.Bhullar & Anr. Vs. The Punjab State Electricity Board & Othrs., 1991(1) SLR 378.
5. Union of India Vs. H.N.Kirtania, 1989(3) SCC 445.

12. It is further stated that while alleging malafides, the allegations should be specific not general and as the applicant has not impleaded either Shri Prabhakar Singh or Shri Mohan Swarup, the ground of personal malafides cannot be entertained. Reliance is placed on a decision in Surinder Singh Vs. State of Haryana, 1991(4) SLR 699.

13. In rejoinder applicant has stated that as per the OM dated 9.10.1995 period of deputation in case of Shri Prabhakar Singh should have been treated as part of service and as he has longer stay than the applicant, the transfer of the applicant is a mere camouflage, in the guise of punitive order as well as malafide. He placed reliance on a decision of the Apex Court in Shilpi Bose Vs. State of Bihar, AIR 1991 SC 532.

14. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, the claim of the applicant is liable to be rejected as the transfer has

neither been proved to be against the policy of transfer guide-lines or statutory rules, as well as a punitive measure actuated with malafides. Applicant, who has now been transferred to Kolkata, was earlier transferred from Kanpur to Mumbai and thereafter on account of his request for construction of House at New Delhi, he was brought to Delhi on 28.11.1995 and had completed more than 5 years tenure. Present transfer is on account of administrative exigency as four posts of Superintending Engineer (Electrical) are lying vacant at Kolkata. As per the policy also, the maximum tenure is five years and as the applicant has an all India transfer liability, repeated posting at the same station cannot be acceded to. Moreover, applicant, out of his 20 years tenure, had remained with the respondents in Delhi for 14 years. He has no indefeasible right to be deputed to a particular place of his choice indefinitely.

15. In so far as the allegation of the applicant against one Shri Prabhakar Singh and Shri Mohan Swarup by alleging discrimination on the ground that despite having longer stay they have been retained whereas the applicant has been shunted out shows arbitrariness and malafides on part of the respondents, cannot be countenanced. Shri Prabhakar Singh has been sent on deputation to an ex-cadre post and remained there from 24.12.1997 to 25.4.2002 cannot be treated as longest stayee. As regards Shri Mohan Swarup, as he was involved in the parliament library project and it was essential to complete the electrical arrangements urgently, his stay was essential in public interest as well as in

administrative exigency. Moreover, applicant has not impleaded these persons as necessary parties in the OA, i.e., as respondents in the OA, as such without being afforded an opportunity to rebut, no malafides can be allowed to be raised and established against them. Moreover in the posting of SE (E), the rule or policy of transfer, length of service is not the only criteria but one of the factors. The final decision is to be arrived at by the Head of the Department and in this case as the applicant has miserably failed to show any malafide or arbitrariness in the action of the respondents, action of the respondents is neither violative of any statutory rules, guide-lines nor punitive in nature.

16. In so far as the question of applicant's option for other places, and the decision of the respondents not ~~to~~ ^w _u acceded to it ^{is} _u concerned, I find that despite giving options to nearby places the persons who have already been deputed there are not yet matured for transfer as they had not completed their stipulated tenure.

17. As far as the construction of his house and other family difficulties are concerned, having all India transfer liability, the applicant cannot assail the transfer order which is in administrative exigency and also in public interest. This Court in a judicial review cannot act as an appellate forum to decide the transfer of the officers on administrative grounds and the wheels of administration should be allowed to run smoothly, Tribunal is not expected to indict the working of the administrative system by

transferring the officers to proper places, and it is the prerogative of the administration. As nothing has been brought to establish any malafides or extraneous consideration, the expediency of posting an officer at a particular place cannot be gone into by this Court. This view, is fortified by the decision of the Apex Court in State of Madhya Pradesh & Ors. Vs. Sri S.S.Kourav & Ors., JT 1995(2) SC 498.

18. Being a general, routine transfer well within the guide-lines and in administrative exigency, cannot be interfered.

19. Applicant having failed to establish a prima-facie case for my interference, OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/